



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Public Copy

File: EAC 99 006 51836

Office: Vermont Service Center

Date: FEB 14 2000

IN RE: Petitioner:  
Beneficiary:



PETITION:

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: Self-represented

Identifying information  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

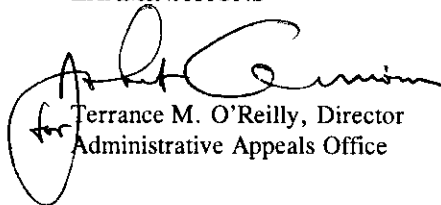
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
for Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director of the Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner, a law firm established in 1984, seeks to employ the beneficiary part-time for three years as an academic affairs assistant in the H-1B classification for specialty occupations. In a decision issued April 14, 1999 (denial), the director determined that neither the beneficiary nor the position met the requirements for a specialty occupation. The petitioner appealed on May 14, 1999, (appeal). He contended that, properly understood, the position was a specialty occupation, and the beneficiary qualified for it. Letter dated May 13, 1999 to the director (appeal brief). As to the beneficiary, the record included a credential evaluation report (report) and a background review from the Director, the Juilliard School, dated December 19, 1998 (assessment). With the assessment, a certificate of the Central Conservatory of Music, China (resumé) evidenced one progressively responsible position.

Provisions of § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), accord nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. The definition in § 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), describes a "specialty occupation" as one which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Regulations in 8 C.F.R. 214.2(h)(4)(ii) define the term specialty occupation as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor, including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The Act, in § 214(i)(2), 8 U.S.C. 1184(i)(2), exacts from a qualified alien coming to perform in a specialty occupation either:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Hence, the beneficiary must meet one of the criteria of 8 C.F.R. 214.2(h)(4)(iii)(C) in order to perform services in the specialty occupation, namely,

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The assessment evaluated the equivalence of her work with the missing baccalaureate in only conclusory terms and did not satisfy 8 C.F.R. 214.2(h)(iii)(C)(2). In fact, the appeal brief at 3 relied on 8 C.F.R. 214.2(h)(4)(iii)(C)(4) and stated,

The [denial] indicates that the beneficiary possesses the equivalent of two and one-half years of undergraduate study for an accredited United States institute of higher learning. Moreover, the [denial] acknowledges without objection or qualification a statement [in the assessment] that through education and experience, the beneficiary possesses the equivalent of a bachelor's degree in music and management....

[The assessment's writer] noted that the beneficiary had advanced to the place of holding the "complicated and challenging job of Dean of the Administrative Department of the Central Conservatory of Music in Beijing, China." Moreover, he attested to the relevance and quality of the beneficiary's work experience for the instant specialty occupation, and he offered his evaluation that her earlier work experience was directly within the music education and management field.

The conservatory's transcript revealed part-time study for less than three years, with only a few courses in arts or management. The report did not quantify the part-time factor, justify its equivalency with two and one half years of a full-time study in an undergraduate program in the United States, or explain the weight of the courses which were not in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). The report did not evaluate the equivalency of the foreign educational credentials in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(D)(3).

The assessment buttressed the equivalence of experience for education, stating,

... Additionally, my own knowledge of administration leads me to conclude that the professional quality of the record keeping, transcript maintenance etc. requires someone with specialized training in music education and management at the bachelor's degree level....

The equivalence of experience with a degree depends, instead, on 8 C.F.R. 214.2(h)(4)(iii)(D)(5) and one of its five elections in (i)-(v). It states, as applicable to these proceedings,

... It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;....

In respect to subsection (i), no two recognized authorities supported the beneficiary's expertise in terms of the regulation. The assessment surmised only that she held positions which must

imply a degree. No inquiry validated experience in the specialty occupation as gained with those who had a degree or its equivalent.

The resumé manifested job duties from 1984 to 1996 as,

... Piano room management, student registration, tuition collection, student attendance record, file and transcript management, syllabus arrangement for every semester of each grade and the annual nationwide examination grading.

The duties' recital neither establishes the specialized knowledge for them nor the beneficiary's level of theoretical and practical application to accomplish them. 8 C.F.R. 214.2(h)(4)(ii). Also, the beneficiary did not gain her experience working with peers, supervisors, or subordinates who had a degree or its equivalent in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). One authority, arguably, apportioned one year and a half as an administrative dean, out of twelve years of work experience, as being in a progressively responsible position. No two authorities attested the recognition of the beneficiary's expertise in several, progressively responsible positions in the specialty occupation. 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i).

The beneficiary's assessment and resumé encompassed work experience with ordinary duties in music, records, and facilities. The brief period as an administrative dean did not establish the recognition of her expertise in progressively responsible positions directly related to the specialty. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). In fact, the petition offered a part-time position, stepping backward from progressively more responsible positions. Three years of specialized training and progressively responsible experience must be demonstrated to substitute for one year of the missing bachelor's degree. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). The record did not prove the recognition of expertise equivalent to a degree.

The statute exacts both prescribed experience in the specialty for equivalency with the completion of a degree and the recognition of expertise through progressively responsible positions relating to the specialty. See above, § 214(i)(2)(C)(i) of the Act, 8 U.S.C. 1184(i)(2)(C)(i). The evidence did not prove either.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.